

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

SERGIO ALPIZAR  
Plaintiff,

v.

JOHN CHRISTNER TRUCKING, LLC,  
THREE DIAMOND LEASING, LLC,  
AND JACK EUGENE HEIN,  
Defendants

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CIVIL ACTION NO.  
5:17-cv-712

**DEFENDANT'S NOTICE OF REMOVAL**

Defendants JOHN CHRISTNER TRUCKING, LLC, ("Christner") THREE DIAMOND LEASING, LLC ("Three Diamond"), AND JACK EUGENE HEIN ("Hein"), with reservation of all defenses, files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1446. The Court has jurisdiction over this action pursuant to 28 USC § 1332. As grounds for removal Defendants respectfully shows the following:

**I. BACKGROUND**

1. On July 17, 2017, Sergio Alpizar filed Plaintiff's Original Petition, Application for Temporary Restraining Order and Injunction, with Request for Disclosure, Interrogatories, Request for Admissions, and Requests for Production, and initiated an action identifying Defendants, John Christner Trucking, LLC, Three Diamond Leasing, LLC, and Jack Eugene Hein in the 37<sup>th</sup> Judicial District Court of Bexar County, Texas in Cause No. 2017-CI-12969 (The "State Court Action"). See **Exhibit A** attached hereto and incorporated herein for all purposes.

2. Copies of the pleadings filed in the State Court Action, prior to this Notice of Removal, are attached hereto and incorporated herein for all purposes as **Exhibit A**.

3. On July 26, 2017 Christner and Three Diamond were served with the Citation and Plaintiff's Original Petition, Application for Temporary Restraining Order and Injunction, with Request for Disclosure, Interrogatories, Request for Admissions, and Requests for Production. A copy of the Citation and Clerk's Certificate of Delivery and Return of Service with regard to Christner and Three Diamond is attached and included within **Exhibit A**.

4. In Plaintiff's Original Petition (see paragraph 1, above), the Plaintiff has attempted to serve co-defendant Hein with Service of Process at 421 E. Park Drive, Huntington, Indiana 46750-2328.

5. On information and belief, no other defendants have been served with citation in this matter. On further information and belief, any other defendants who are served would consent to removal of this matter. While Jack Eugene Hein has not been served, the undersigned counsel will be representing Jack Eugene Hein, if and when he is served. Jack Eugene Hein, consents to this removal.

7. Defendants John Christner Trucking, LLC, Three Diamond Leasing, LLC, and Jack Eugene Hein timely filed their Original Answer on July 31, 2017, in Cause No. 2017-CI-12969, 37<sup>th</sup> Judicial District Court, Bexar County, Texas, a copy of which is attached hereto and incorporated herein with **Exhibit A**.

## **II. NATURE OF THE SUIT**

8. This case involves a motor vehicle collision involving a commercial motor vehicle operated by Defendant Jack Eugene Hein, who was operating the commercial motor vehicle on behalf of Defendant John Christner Trucking, LLC at the time of the events giving rise to Plaintiff's causes of action.

### III. BASIS FOR REMOVAL

9. Removal is proper because there is complete diversity between parties. 28 U.S.C. § 1441(b).

10. This Court has subject matter jurisdiction over this action and all claims asserted against Defendants Christner, Three Diamond, and Hein pursuant to 28 U.S.C. § 1332 over this civil action, and the action may be removed by Defendants pursuant to 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as shown by Plaintiff's Original Petition attached as **Exhibit A** at p. 2 of 86 ("this is a cause of action that exceeds \$1,000,000.00").

11. This action satisfies all requirements for federal jurisdiction under 28 U.S.C. § 1332.

12. Diversity of citizenship is assessed at the time that the complaint is filed. *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 876 n.5 (5<sup>th</sup> Cir. 2004); *Coury v. Prot*, 85 F.3d 244, 248 (5<sup>th</sup> Cir. 1996) ("Consistent with general principles for determining federal jurisdiction, diversity of citizenship must exist at the time the action is commenced").

13. At the time that the Plaintiff's Original Petition, Application for Temporary Restraining Order and Injunction, with Request for Disclosure, Interrogatories, Request for Admissions, and Requests for Production was filed, and at all subsequent times Plaintiff Sergio Alpizar was a resident of the State of Texas. Therefore, Plaintiff is a citizen of the State of Texas. (See **Exhibit A**, Plaintiff's Original Petition, p. 1 of 86).

14. All Defendants who have been served with summons consent to the removal of this case to federal court. 28 U.S.C. § 1446(a).

15. Defendant John Christner Trucking, LLC is a Limited Liability Company (LLC) organized in the State of Oklahoma, with its principal place of business in Sapulpa, Oklahoma.

16. Defendant Three Diamond Leasing, LLC is a Limited Liability Company (LLC) organized in the State of Oklahoma, with its principal place of business in Sapulpa, Oklahoma.

17. Defendant Jack Eugene Hein is an individual, whose residence and domicile is in Huntington, Indiana.

18. Accordingly, there exists, and at all relevant times there existed, complete diversity of citizenship in this action under 28 U.S.C. § 1332(a), because Plaintiff is a citizen of Texas, Christner is a citizen of the state of Oklahoma, Three Diamond is a citizen of the state of Oklahoma, and Hein is a resident and citizen of the state of Indiana.

19. The amount in controversy in this action, exclusive of interest and costs, exceeds \$1,000,000.00 See **Exhibit A**, Plaintiff's Original Petition, p. 2 of 86 ("this is a cause of action that exceeds \$1,000,000.00").

20. The removing party has the burden to show, by a preponderance of the evidence, that plaintiff's claims exceed the minimum amount in controversy of \$75,000. This burden is satisfied if (1) it is facially apparent that the claims are likely above the jurisdictional requirements or (2) the removing party sets forth the facts in controversy, which supports a finding of the requisite jurisdictional amount in controversy. See *Allen v. R & H Oil & Gas Co. Company*, 63 F.3d 1326, 1335 (5<sup>th</sup> Cir. 1995).

21. Plaintiff alleges the following damages: (1) past and future physical pain and suffering; (2) past and future mental anguish; (3) past and future physical impairment; (4) past and future medical expenses; (5) past and future loss of earning capacity; (6) fear of disease; (7)

disfigurement; (8) cost of medical monitoring; and (6) past and future physical impairment. See **Exhibit A**, Plaintiff's Original Petition, p. 10-11 of 86.

22. Plaintiff seeks monetary damages of more than \$1,000,000.00 (see **Exhibit A**, Plaintiff's Original Petition, p. 2), which exceeds the amount in controversy requirement of \$75,000.

23. Defendants will properly file a copy of this Notice of Removal with the Clerk of the State Court where the action has been pending.

24. Pursuant to 28 U.S.C. § 1446(a), all pleadings, process, orders, and all other filings in the State Court Action are attached to this Notice as **Exhibit A** and incorporated by reference. In addition to the above, an Index of Matters Being Filed is attached to this Notice as **Exhibit B** and a List of All Counsel of Record is attached as **Exhibit C**. Defendants Christner and Three Diamond have tendered the appropriate filing fee for removal to the Clerk of the United States District Court for the Western District of Texas. Exhibits are itemized as follows:

Exhibit A - State Court file including all process, pleadings, and Orders served upon Christner and Three Diamond

Exhibit B - Index of Matters Being Filed

Exhibit C - List of All Counsel of Record

25. Venue is proper in this Court pursuant to 28 U.S.C. §§ 124(d)(4) and 1441(a), because the United States District Court for the Western District of Texas, San Antonio Division, is the federal judicial district embracing the District Court of the 37th Judicial District, in and for Bexar County, Texas, where the State Court Action was filed.

26. This Court, therefore, has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), and removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441.

#### **IV. JURY DEMAND**

27. Plaintiff did demand a jury in the state court action.

#### **V. CONCLUSION**

28. For these reasons, Defendants ask the Court to remove this action to the United States District Court, Western District of Texas, San Antonio Division.

WHEREFORE PREMISES CONSIDERED, Defendants John Christner Trucking, LLC, Three Diamond Leasing, LLC, and Jack Eugene Hein request that this matter be removed to federal court as set forth herein, and that Defendants have such other and further relief to which they may be justly entitled.

Respectfully submitted,

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COUNSEL FOR DEFENDANTS  
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THREE DIAMOND LEASING, LLC,  
AND JACK EUGENE HEIN

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing *Notice of Removal* has been served via the Court's Case Management/Electronic Case Filing (CM/ECF) system to the following counsel of record on this the 31st day of July, 2017:

**Attorneys for Plaintiff:**

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\_\_\_\_\_/s/ Michael Ezzell\_\_\_\_\_  
MICHAEL EZZELL